

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES

v.

NOEL HERNANDEZ

CASE NO. 04CR10319WGY

**DEFENDANT'S MOTION IN LIMINE TO PREVENT THE GOVERNMENT
FROM USING EVIDENCE CONCERNING AN ALLEGED
WESTERN UNION WIRE TRANSFER**

NOW COMES the Defendant, Noel Hernandez, through counsel, and respectfully moves this Honorable Court to issue an order precluding the Government from introducing evidence from Western Union and from Francisco Navarro at trial. In support thereof, counsel states the following:

1. On or about July 14, 2005, the Defendant was notified for the first time that Francisco Navarro had recently told the Government that Noel Hernandez had wired him \$500.00 in the Dominican Republic on July 12, 2004, the day before Navarro's flight to Boston.

2. On or about July 14, 15 and 18, 2005, the Government disclosed various documents from Western Union, which it intends to offer in its case in chief at trial in an effort to corroborate Navarro's anticipated testimony.

4. The deadline for Jencks Act materials was June 14, 2005.

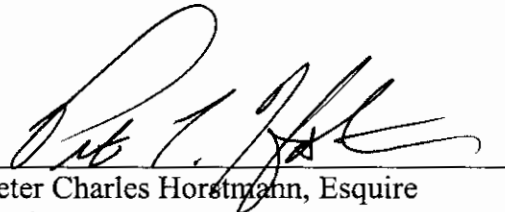
5. Accordingly, the Government's last minute disclosure of this information violates the Court's pretrial Order pertaining to the disclosure of Jencks Act material and the Defendant has been prejudiced by a lack of notice in order to prepare to meet this evidence at trial. See

United States v. Kouri-Perez, 47 F.Supp.2d 166 (D. Puerto Rico 1999)(10 day continuance in trial date was sufficient to cure any prejudice suffered by defense in late disclosures).

6. If this evidence is admitted it will cause a drastic change in defense strategy at trial.

WHEREFORE, based on the foregoing arguments and authorities this Honorable Court is respectfully urged to issue an order precluding the Government from introducing any evidence of the July 12, 2004 wire-transfer.

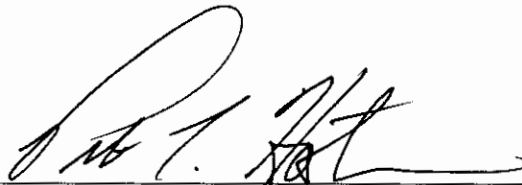
Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Peter Charles Horstmann, Esquire, hereby certify that on this ²⁰~~12~~th day of July, 2005, a copy of the foregoing DEFENDANT'S MOTION IN LIMINE TO PREVENT THE GOVERNMENT FROM USING EVIDENCE CONCERNING AN ALLEGED WESTERN UNION WIRE TRANSFER was served by hand delivery upon Nancy Rue, Assistant United States Attorney, United States Attorneys Office, One Courthouse Way, Suite 9200, Boston, MA 02210 and David G. Tobin, Assistant United States Attorney, United States Attorneys Office, One Courthouse Way, Suite 9200, Boston, MA 02210.



Peter Charles Horstmann, Esquire